Scipio Africanus Jones, Sharecroppers' Advocate

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The decisions of the US Supreme Court in the last thirty years of the 19th century and the first fifteen years of the twentieth set the stage for violence against and abuse of African Americans. During and after the Civil War, Congress and the states, when the Southern states were essentially controlled by the Reconstruction Congress, adopted the Thirteenth Amendment abolishing involuntary servitude, the 14th granting to all born in the US due process of law and the equal protection of the laws as well as protection of their privileges and immunities, and the 15th granting all persons including Afro-Americans the right to vote.. Congress also attempted to implement these constitutional provisions by enacting the Enforcement Act which prohibited anyone from interfering with the exercise of the right to vote and declaring it a crime to go on the highway in disguise to conspire to deprive anyone of the equal protection of the laws or deprive anyone of his privileges or immunities. Congress also adopted the 1867 Habeas Corpus Act, which authorized federal courts to review state criminal convictions to determine if the conviction was obtained in accordance with due process of law.

Thereafter, a Republican Supreme court, whose judges were appointed by Lincoln and Grant, proceeded, in a series of cases, to systematically gut these provisions for the next one hundred years. I will only mention a few such cases:

The Slaughter-House cases arising in Louisiana, were decided in 1872, and did not involve Afro-Americans at all. The butchers of New Orleans argued that a Louisiana law that required all farm animals to be slaughtered in a central location to which the butchers must pay a fee deprived them of their privileges and immunities under the 14th Amendment. In a 5-4 decision the court held that the 14th amendment applied only to federal privileges and immunities and that these were limited to specific clauses of the Constitution. All other privileges and immunities, whether the right to slaughter in a location of one's choice or the immunity against Ku Klux Klan violence was a state immunity and could be protected only by the states, not the federal government. The butchers had no claim to protection under the US Constitution.

In US v. Cruikshank, an 1875 decision, the Supreme Court, with an even broader majority, reversed a federal conviction against Klansmen for conspiring to intimidate two ex slaves. The indictment failed to specify an intent to interfere with federal privileges and immunities, as opposed to state privileges and immunities. In US v. Harris, in 1883 the Court beat back the US Attorneys argument that the Enforcement Act and the 13th Amendment, prohibiting slavery, reached the Ku Klux Klan kidnapping and lynching two Negroes from a Tennessee County Jail.

In Hodges v. U.S., a 1906 decision, the court reversed and dismissed a criminal conviction of three white men for intimidating four black men from working at a lumber mill in eastern Arkansas. The blacks had a contract with the mill operator, and apparently the defendants dressed as Klansmen had frightened them away from performing their contract. Justice Brewer for the majority cited the Slaughter-House cases as limiting the reach of any federal statute to only a very small list of federal

privileges and immunities. All other privileges and immunities were protected only by state law.

Finally in 1915, the Supreme Court in effect emasculated the 1867 Habeas Corpus Act authorizing federal courts to review state court convictions. Frank v. Magnum, 237 U.S. 309 (1915). Leo Frank, a Brooklyn Jew and Cornell graduate, married into a wealthy Jewish family in Atlanta and became superintendent of a pencil factory there. A young Irish factory worker, 13 year old Mary Phagan, was found raped and dead in the factory one night in 1913. The factory's Negro janitor, Jim Conley, implicated Frank and he was tried in an atmosphere sensationalized by a newspaper rivalry between the Atlanta Constitution and the Atlanta Georgian. Because of heightened tension and raw emotions that the trial evoked, the trial judge urged the defendant and his lawyer not to be present when the jury verdict was read for fear that the verdict could lead to violence. When the verdict of guilty and sentence of death was read in open court, a great shout of approval arose from the crowd outside the courthouse and the trial judge, as a result, had difficulty polling the jury because of the noise.

Retained counsel filed a motion for new trial, lost and lost the appeal to the Georgia Supreme Court, then lost on a writ of habeas corpus to the state courts and finally filed a petition for writ of habeas corpus in the federal district court. From the summary rejection of this petition the case went to the US Supreme Court. Justice Mahlon Pitney, writing for the majority, upheld the denial of the writ of habeas corpus, on the ground that Frank waived the right to raise the issue of his absence during the return of the verdict in his original motion for new trial. Oliver Wendell Holmes and Charles Evans Hughes, who was soon to step down from the court and run against Wilson in 1916, dissented and held that the district court should grant a hearing to determine if the mob outside the courthouse so intimidated the jury as to compel them to bring in a guilty verdict regardless of the evidence.

Ironically, Holmes' insight respecting mob influence over the course of a legal proceeding proved prophetic. After the Supreme Court denied Frank his requested habeas relief, the outgoing governor of Georgia, after reviewing some 10,000 pages of trial transcript, commuted Frank's sentence to life imprisonment, primarily to give Frank more time to vindicate himself. As Frank began serving his life sentence on a Georgia prison farm, a group of prominent citizens, an ex governor, the son of a US Senator, and lawyers and legislators, known as the Knights of Mary Phagan, openly planned a lynching party. They successfully kidnapped Frank from his prison farm in a nightshirt and escorted him hundreds of miles to Marietta where they lynched him. The Knights of Mary Phagan went on to form the core cadre of the resurgent Ku Klux Klan. So the stage was set for the racial violence arising right after WW1.

In the summer of 1919 Negro Americans became frightened and demoralized as whites became more and more racist. Under the administration of Woodrow Wilson the federal government had instituted segregation in its work force at both the Treasury Department and the Post Office. A miscegenation law law for DC was adopted. In 1915 t DW Griffith's film "Birth of a Nation was released and became the most successful film of its time. Birth of a Nation glorified the Ku Klux Klan, depicted the era of Reconstruction as an unmitigated disaster, and raised the specter of African Americans raping young southern white women. The film contributed mightily to th rebirth of the Ku Klux Klan.

For blacks, after WW1, disillusionment ran deep. Thousands of blacks had fought for their country in the war, albeit in segregated units, many in France. Some of the Negro units had earned the French Croix de Guerre, and had been hailed as heroes by French citizens. But when these units returned to the United States, they returned to segregated trains, restaurants, and other facilities in the US south, and to ghettoes in the north.

In May 1919 anarchists blew up the home of the Attorney General in DC triggering the notorious Palmer raids against suspected anarchists. Many whites suspected that Negroes had been radicalized by the anarchists and Bolsheviks. Strikes rippled across the country and sometimes blacks were brought in as strike breakers, increasing tensions among the working class. In late September, after barnstorming the country as he spoke in favor of the ratification of the League of Nations, President Woodrow Wilson collapsed from exhaustion and suffered a debilitating stroke.

In early August 1919 race riots had broken out in Chicago triggered by some white toughs throwing rocks at a Black teenager on the south shore of Lake Michigan. Over the course of the next three days of violence 23 blacks and 15 whites were killed; 342 blacks and 173 whites were injured. The underlying cause of the Chicago riots was attributed to a rising black middle class who sought to move into white residential areas. At the end of August another race riot took place in Knoxville, Tennessee, triggered by a black intruder shooting a white woman while she slept. When a suspect was arrested, a mob assaulted the jail in an unsuccessful attempt to lynch the suspect. The same scenario played out in Knoxville as in Chicago: looting, then restoration of order by the national guard. Seven persons died, hundreds were wounded and some 1500 blacks tried to move away.

Even in Cleveland, a town with a history of racial tolerance, where the NAACP held its annual convention in the summer of 1919, anti-black violence flared up in several incidents which did not lead to race riots. In once instance whites threw stones at black children riding in a streetcar; in another whites threw stones at black children swimming in a park some distance from the black ghetto.

Into this cauldron of anxiety and raw emotions returned a 21 year old Negro WW1 veteran, Robert Hill, to the Mississippi River bottomland of eastern Arkansas in 1919, Hill was trying to organize Negro sharecroppers into unions so that they could get a fair accounting of their expenses and debts from white landlords and of proceeds from sale of their cotton by these landlords. The bottomland, recently opened as a result of draining after levees were built along the banks of the Mississippi and the hardwoods were cut and hauled for lumber, was ideally suited for cotton growing. From 1914 to 1918, the world price for cotton had risen from 7 cents a pound to 30 cents a pound. Yet sharecroppers were receiving the same $50 to $100 per year for their work in 1918 as they had in 1914.

Hill's goal was to organize the sharecroppers in and around Elaine so that they could collectively demand an accounting from the plantation owners for the sale of the cotton they had grown and harvested. Hill planned to hire a white lawyer, a former assistant US Attorney who had successfully prosecuted one peonage case ten years before, one Ulysses S. Brant. Brant, long since relieved as a US Attorney, was now looking for civil clients.

A brief digression: Peonage or involuntary servitude was pervasive in the South in the early part of the 20th century and took many forms. One form was civil debt, which sharecroppers could never shake off. Plantation owners advanced money to sharecroppers for supplies purchased at inflated prices and then rendered either no accounting of the seasonal sale of the share cropper's cotton, as was the case for the Elaine sharecroppers, or gave out bogus figures so that the sharecropper remained perpetually in debt, and had no cash to move away.

States adopted laws that created a presumption that a sharecropper's premature withdrawal from a term contract (usually one year) created a presumption of fraud, punishable by lengthy imprisonment at hard labor, and barred the sharecropper from testifying that he had no such fraudulent intent at the inception of the contract. In 1911 The US Supreme Court held one of these laws in violation of the 13th Amendment Bailey v. Alabama, 219 U.S. 219 (1911). However, southern law enforcers ignored the decision. Southern law enforcement officers also used vagrancy laws and loitering laws to arrest Negroes, and upon conviction leased them out to plantation owners, or mine owners, or industrialists for lengthy periods to work off their fines and court costs at ridiculously low per diem amounts., often 50 cents per day This last form of peonage has been described in a new Pulitzer prize winning book, Slavery by Another Name.

On the night of September 30, 1919 about 100 sharecroppers met with Hill in the Hoop Spur Church. Knowing that the purpose of the meeting was controversial, the sharecroppers stationed guards with armed with rifles outside the church. Hearing about the meeting through his Negro informants, Sheriff Frank Kitchens, who was ill, sent his deputy, Charles Pratt and a MO. and Pac. security agent, W.A. Adkins along with a Negro jail trustee, Kid Collins, to stake out the meeting and report back. Shots were exchanged between the sheriff's party and the Negroes guarding the church meeting. Adkins was killed, Pratt wounded and Kid Collins hightailed it back to report on the events. Early on the 1st of October, Sheriff Kitchens deputized a posse to hunt down the "insurrectionists". By mid morning the posse had killed five sharecroppers. Kitchens asked the Arkansas governor, Charles Brough, for reinforcements and the governor prevailed in obtaining about 500 soldiers from nearby Camp Pike. Meanwhile the posse grew into a mob as men started pouring in from surrounding counties and from Western Mississippi. The posse shot at sharecroppers on sight; the army was more restrained and refrained from shooting at Negroes who had surrendered, but instead marched them off to the Elaine schoolhouse where they were confined. However, the army had machine guns which they used to root out Negroes hiding in the cane breaks by the Mississippi, and one report suggested that they had killed as many as 150 Negroes hiding in the canebrakes after one soldier was killed, whether by friendly fire or a sharecropper bullet remains unclear.

Sheriff Kitchens' posse continued its rampage. One incident involved four Negro brothers, a dentist, doctor, and two WW 1 veterans, who were returning from a hunting trip near the confluence of the Arkansas River with the Mississippi when they got word of the massacre. They took the precaution to abandon their vehicle full of game and take the train into Helena. They were arrested upon arrival, on suspicion of distributing arms to the insurrectionists, chained together, and found dead along with a dead white guard.

After six days, things quieted down. The toll: 5 dead whites, 100-200 dead Negroes, likely nearer to 200, and a white lawyer, Ocie Bratton, who was to represent the

sharecroppers in their fight with the plantation owners, arrested and run out of town, then later charged with barratry. Some three hundred sharecroppers were captured, and after US Army soldiers mounted machine gun positions to prevent a mob from storming the county jail in Helena, Arkansas, there began the winnowing process to determine who should be indicted and who released.

The line of the plantation owners, represented by a committee of seven of the most prominent planters and business men appointed by the governor, was that the Hoop Spur church meeting was a meeting to plan to kill the area's planters. Thus those believed to be at this meeting were the ones to be charged, and their leaders, Frank Moore, Ed Hicks, Ed Coleman and others were the ones most likely to be charged with murder as a capital offense. There was no direct physical or testimonial evidence implicating these individuals with the shooting of the four members of the white posse and the one soldier. To obtain such evidence, the suspects were taken to the top floor of the jail, stripped, and spread eagled on the floor, held down by jail trustees and whipped until they became more malleable. Sometimes their mouths were stuffed with rags soaked in formaldehyde causing them to feel a drowning sensation and sometimes they were seated in a chair with electrical nodes and given an increasing dosage of voltage. After three or four whippings, the prisoners were willing to say anything their interrogators wanted them to.

In mid October some 150 to 200 defendants had been released with the admonition not say anything and get back to work. The trials began in early November. Each lasted not more than forty-five minutes or an hour. The defendants were in the same clothes in which they were arrested, by now filthy and caked with mud. The defense lawyers assigned, some of whom had been members of the deputized posse, and some of whom were partners with the prosecutor team, did not confer with their clients beforehand, and did not cross-examine any prosecution witnesses, or call any defense witnesses. Only a few defendants, like Frank Moore, had the courage to testify in their behalf. It took the all white male juries from two to eight minutes to return verdicts of guilty of a capital offense for the first twelve defendants, the leaders of the Hoop Spur meeting.

The remaining defendants pleaded guilty to lesser offenses, second degree murder and assault. Those convicted of lesser offenses were shipped by rail to Cummins Prison Farm, 75 miles southwest of Helena. The twelve capital prisoners were shipped by rail to Little Rock, and then trucked 5 miles to the Walls, the state penitentiary where they were placed on death row, but allowed to bathe for the first time and given a clean set of denim overalls.

Meanwhile, the US Attorney General, A. Mitchell Palmer, issued his report on the radical Negro press, and a Negro, Jordan Jameson, was burned at the stake before a cheering crowd in Magnolia, Arkansas.

Another version of the Elaine insurrection or massacre, other than the one put out by the committee of seven planters and businessmen, was circulating in addition to the official version. An NAACP assistant Secretary, Walter White, a black man who passed as a white, had traveled to Arkansas to investigate the Elaine incident with credentials as a reporter from the Chicago Daily News. After interviewing the governor, he traveled to Phillips County, hoping to interview some local witnesses. But he was sufficiently intimidated that he decided he had better clear out while he was still incognito. He did

file a report in the Crisis, the publication of the NAACP, which report was at odds with the official white version. But much of the White's report dealt with the peonage system in the south-sharecroppers held in perpetual debt and unable to move because they were cheated by the planters- and the Elaine incident as a logical outcome of the system.

Whether from reading the Crisis or from word of mouth, Scipio Africanus Jones, a black lawyer in Little Rock was familiar with the contrary version when the 12 Elaine murder convicts were moved to the state penitentiary outside the capital. Jones and his colleagues sought to form a defense committee to fund the appeal of the verdicts. One of these, Thomas Price, wrote to the NAACP asking for money. However, the NAACP had a somewhat different agenda and was looking to hire a white attorney to represent the condemned sharecroppers. The NAACP selected instead George Murphy, an ex CFSA Colonel, and a respected lawyer, and sought to raise $3,000 for him to handle the appeal. Jones quickly worked out an accommodation with Murphy whereby Murphy would serve as the lead courtroom counsel and Jones would do the legwork in investigating and preparing the case. Jones would have to do his fundraising locally. At the local level, the Defense Fund raised $8500 to defray the expenses of the appeal, the first retrial, and to cover the costs of the families of the condemned to move to Little Rock to be near their convicted spouses.

Scipio Africanus Jones, the offspring of former domestic slave and her plantation owner, was born while the household was fleeing to Texas from the Union Army over-running Arkansas in 1864. It was common for slaves to give the name Scipio Africanus, the great Roman General who defeated Hannibal at Zama in 201 BC but there was irony in the name as Scipio Africanus had also brutally crushed a Roman slave revolt and ordered the crucifixion of some 20,000 Roman slaves. After the Civil War Scipio Africanus Jones and his mother returned to Tulip Arkansas where he grew up as a field hand. But he got the chance to attend one of the new Reconstruction schools for blacks. He moved to Little Rock as a teenager, received some funds from his white father for schooling, and attended Philander Smith College to become a teacher. He applied to the University of Arkansas Law school, but was rejected, and instead found a white lawyer with whom he could clerk and read law at night. In 1889 Jones passed his oral exams before a trio of white attorneys and became a member of the Arkansas bar.

He picked up as a client the largest Negro burial association in the area and generally represented middle class Negroes. He unsuccessfully brought an action to desegregate train cars in Arkansas, an unsuccessful appeal to overturn a conviction of a Negro by an all white jury, and he tried, with spotty success, to open up the Arkansas Republican party to Negro delegates to the Republican conventions. Ever courteous, he was well regarded by white lawyers and judges in Little Rock and once was asked by a white municipal judge, who had to recuse himself, to decide a case between two Negro litigants. Thereby he earned the sobriquet Judge Jones.

Judge Jones and Colonel Murphy appealed the capital conviction of the 12 Elaine defendants to the Arkansas Supreme Court. While they lost their key argument respecting exclusion of Negro jurors from the panel, they did win a partial victory. The court reversed the conviction of six defendants, the Ware six, who had been convicted of killing two whites, the Mo. and Pacific guard staking out Hoop Spur church in the initial shooting, and a member of the posse the next day. The jury had brought in a guilty verdict in these shootings without differentiating whether guilty of 1st degree murder or

guilty of 2d degree murder, and the state supreme court held this to be reversible error. These six became known as the Ware six. However, the capital conviction of six other defendants, including Frank Moore, a WW1 veteran, all of whom were charged with murder of another posse member, Clinton Lee, was affirmed. They became known as the Moore six.

Retrial of the Ware six was scheduled for the winter of 1920 in Phillips County before the original trial judge, Jimason Jackson. However, the sentiment for a lynching in Phillips Country was still strong. On Jan 21, 1920 Robert Hill, the black union organizer and veteran who had escaped Phillips County the previous fall, was arrested in Topeka, Kansas and the Arkansas Attorney General sought his extradition. Kansas Governor Henry Allen held a public extradition hearing and after reading the hate mail from Phillips County decided that Hill could not receive a fair trial there and denied the extradition request.

But in Phiiliips County the retrial of the Ware six was to go forward. Judge Jones went with Murphy to Helena even if there were no hotels where he could stay. Instead, black sharecroppers put him up and it was reported that he moved from house to house each night so that he could not be found by whites bent on vengeance. On the first day of the retrial Colonel Murphy collapsed with a mild heart attack, and Jones had to carry on alone.

The retrial was conducted much differently than the first trial. Jones established a record for appeal on the exclusion of Negro jurors, asking to examine the jury commissioner on this issue, which request was denied. Prosecution witnesses were vigorously cross examined and trapped in inconsistencies, especially as to what happened that first night at the church; both defendants and witnesses repudiated their incriminating statements as obtained under torture, defense witnesses were called. But the result was the same: all six of the Ware defendants were again found guilty of a capital offense. If Jones could find any solace, perhaps it was from the words of the prosecutor: “Scipio Jones, his skin was black but by God he was a good man……And smart, too.”

Immediately after the retrial of the Ware six, Murphy and Judge Jones attended to their appeal to the Arkansas Supreme Court and petitioned the US Supreme Court for review of the state supreme court’s decision affirming the guilty verdict of the Moore six.

While they were optimistic about the Ware Six, because of the trial judge’s refusal to let Jones examine the jury commissioner, they knew the chances for a reversal by the US court of the Moore six were slim. They were running out of money again, The defense team had to beg for assistance from the NAACP, another $5,000. On October 11, 1920 the US Supreme Court refused to review the trial of the Moore six. On the same day Jones’ co-counsel, Colonel George Murphy was stricken with a second heart attack and died. On December 6 the Arkansas Supreme Court reversed the jury verdict of the Ware six, following the US Supreme court precedent in Strauder v. West Virginia, 100 US 333 (1879) that refusal to afford an opportunity to defense counsel to establish that an all white jury was discriminatory constituted error.

Judge Jones’s hope was to convince the governor to hold off executing the Moore defendants, whose appeals were now exhausted, until the outcome of the second retrial of the Ware six. But the whites of Phillips County, including the former counsel for some of the defendants were clamoring for swift justice, and now a new governor was not about to cross these citizens. The execution date for the Moore six was set for mid June,

1921. While Judge Jones planned to file an application for writ of habeas corpus in federal court, the sole federal judge was away in Minnesota handling overflow cases there and was not expected to return until after the execution date.

The application for habeas corpus was filed in the Arkansas chancery court instead before an independent minded judge who granted the application and ordered a stay. Jones knew that the chancery court's order was likely to be reversed on appeal to the Arkansas Supreme court, but he bought a little time, about three months until September 1921. The Arkansas Supreme Court, as expected, dismissed the habeas court applications, based on the precedent in the 1915 US Supreme Court case Frank v. Magnum. At about the same time the Phillips county trial judge, scheduled the second retrial of the Ware six in neighboring Lee county.

Then in August a big break came. Two Mo. And Pac. Security agents, one of whom, Henry Smiddy, had been active with the posse, hunting down the sharecroppers from the beginning, and had participated in the interrogation of the sharecroppers, came to the offices of Colonel Murphy's former law partner, Edgar McHaney, and gave him a new story. In essence their story cast doubt on the fact that any sharecropper had shot Clinton Lee, confirmed that both the Sheriff's posse and the US Army had hunted the hiding sharecroppers like rabbits, that many of the sharecroppers had been tortured by whippings and simulated drowning and electrocution, and that the Sheriff and plantation owners had promised the white mobs clamoring to lynch the arrested sharecroppers that Negroes would be swiftly convicted if the mob would disperse.

But then McHaney withdrew from the case, on the grounds he had not been paid, leaving Jones to fight on alone. Jones filed his application for writ of habeas corpus in federal court with the new affidavits from Henry Smiddy and his colleague. The state admitted the facts as alleged in the affidavit, but argued that the Arkansas Supreme Court had already held the trial was fair and therefore the federal courts should not intervene. The federal judge denied relief, but stated he was troubled by the facts and granted the Moore defendants a stay to appeal to the US Supreme Court. Meanwhile Jones had raised another $6,000 locally and had hired two prominent white attorneys in Lee county to defend the Ware six. Faced with the new affidavits and new legal firepower, the prosecuting attorney requested time to further investigate and obtained a continuance of the retrial of the Ware six.

The NAACP sought Moorfield Storey, a Harvard Law graduate, distinguished lawyer, president of the NAACP, and former secretary to abolitionist Senator Charles Sumner, to handle the appeal before the US Supreme court. Storey was hesitant, feeling that the law was against the appeal. But after reviewing the record prepared by Jones, he agreed even though his doubts remained. The NAACP also enlisted US Bratton, now practicing in Detroit, after being chased out or Arkansas by white mobs, because of his familiarity with the sharecroppers and the peonage system. Jones was troubled by the NAACP's choice of Bratton, not only because it excluded him, the one man who had borne the principal burden of the appeals and retrials, but also because Bratton was extremely disliked in Phillips County, and Jones was afraid of retaliation against his clients for this choice. He asked that Bratton's name be removed from the brief so that back in Arkansas he could argue that Bratton had appeared only as a volunteer. Another set back occurred when the Clerk advanced the oral argument by a week, and Jones did not learn of this until it was too late for him to get a train from Little Rock to

Washington. In the event the names of all three attorneys appeared in the headnotes of the decision although Jones never made it to Washington.

Justice O.W. Holmes, supported by Justice Brandeis, persuaded four conservative justices to grant the writ and order the district judge to hear the evidence:

We shall not say more concerning the corrective process afforded to the petitioners than that it does not seem to us sufficient to allow a Judge of the United States to escape the duty of examining the facts for himself when if true as alleged they make the trial absolutely void. ...We will not say that they cannot be met, but it appears to us unavoidable that the District Judge should find whether the facts alleged are true and whether they can be explained so far as to leave the state proceedings undisturbed.

Now came the hard part, what to do on the retrials. The defense' position was more precarious than appeared as the two whites who had recanted were now living in destitution out of state and might not prove cooperative. However, Jones got two more breaks. First, the Governor of Arkansas, on his own, commuted all sentences of fifteen years or less of the prisoners held at Cummins prison farm to time served. Second, since the prosecutor had requested continuances of the Ware six for each of two terms of courts (about six months per term) while the defense attorneys said they were ready for trial, the defense filed motions for discharge on the grounds of failure to accord these six defendants a speedy trial. The new judge in adjoining Lee County, probably thinking that a discharge of these six defendants could avoid a very sticky trial, granted the motions.

As to the remaining 14 defendants, including the Moore six, and the 8 prisoners at Cummins Prison Farm serving sentences longer than 15 years, Jones orchestrated petitions for clemency to the new governor, and many whites signed on. Some ten members of the power structure in Phillips County, including the prosecuting attorney petitioned the governor for commutation to second degree murder for the Moore six and parole based on time served. On December 16, 1923, after the eight remaining prisoners at Cummins prison farm had completed picking the cotton grown at the farm, Governor Thomas McCrae commuted their sentences to time served, but announced that he would do more for the remaining Moore six. Judge Jones orchestrated a second petition for clemency and obtained the signatures of some 700-800 persons, including the planters in and around Elaine.

The day before the governor was to leave office, Jones met with him again for fifteen minutes. The next day the governor commuted the last of the sentences. Within little over three years after the initial arrests, Scipio Africanus Jones had obtained the discharge of all of the remaining sharecroppers originally arrested and charged-over 50 individuals in all.

Today, the sharecroppers have gone, either North or to unemployment, as cotton is picked by machine. Gone too is the peonage system upon which sharecropping was based. Prosecutions for violation of the Reconstruction federal peonage law began in earnest under FDR's war time Attorney General, Francis Biddle, after he and others realized that unless action was taken, the United State was vulnerable to charges of racism from the Soviets and the Nazis and that it would be difficult to recruit Negroes to fight for their country unless the country took action against this scourge.

Economics also finished the sharecropper system. Cotton is being replaced with soybeans and corn. Since 2003 the world price of cotton has declined by 23%, while the

price of corn, boosted by increasing demand for ethanol, has risen by 65% and that of soybeans, boosted by a world shortage of Canola oil, by 39%. The Mississippi Delta region, however, remains one of the poorest in the South with 27% of its inhabitants living below the poverty level, those Blacks who did not move north and were replaced by cotton pickers or new crops.

After Moore v. Dempsey, resort to federal habeas corpus to review state criminal convictions became more and more accepted, until the procedure reached high noon under the Warren court In Fay v. Noia, 372 U.S. 391 and Townsend v. Sain, 372 U.S. 293, both US Supreme Court decisions rendered in 1963. With these decisions the Warren court sought to use federal courts to review, whether on the record or at evidentiary hearings, all federal constitutional issues arising in state criminal trials, as the Supreme Court's role was limited to fashioning new legal principles and could not review every criminal conviction.

Federal judges grumbled that their regular workloads were diverted by time spent reviewing habeas petitions. And with the swing to a more conservative court, first under Chief Justice Warren Burger, then under William Rehnquist, the court began circumscribing access to federal habeas corpus with new limitations: only cases where there was a clear violation under existing law could be considered and new principles were excluded, if constitutional issues had been considered by the state court and rejected, federal courts might consider these issues again only if the federal judge determined that the state court had unreasonably rejected the constitutional deficiency, federal claims that were rejected in state court on state grounds- failure to make timely objection or timely appeal- barred consideration in federal court.

So we can't say that Scipio Africanus Jones staked out a new jurisprudence expanding the right to habeas corpus to review the constitutionality of state criminal trials. But we can say that his patient, persistent, and courageous work in obtaining the release of more than 50 Negro convicts, ensnared in a legal debacle in the post WW1 racist deep South was a most remarkable achievement.